Supreme Court, U. S.
FILED
SEP 23 1980
MICHAEL RODAK, JR., CLERK

No. 79-1874

In the Supreme Court of the United States

OCTOBER TERM, 1980

GENE STIPE, ET AL.,
Petitioners,

VERSUS

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION OF PETITIONERS TO DEFER CONSIDERATION AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

BERNARD J. ROTHBAUM, JR.

LINN, HELMS, KIRK & BURKETT
Suite 410, Fidelity Plaza
Oklahoma City, Oklahoma 73102
(405) 239-6781

Counsel of Record for Petitioners

of Counsel:

JAMES P. LINN, *Esq.*

W. H. LAYDEN, *Esq.*

WARREN GOTCHER, *Esq.*

September, 1980

TABLE OF AUTHORITIES

Cases	PAGE
Allegrucci v. *United States*, 372 U.S. 954 (1963)	2
Department of Banking v. *Pink*, 317 U.S. 264 (1942)	2
United States v. *Gargotto*, 510 F.2d 409 (6th Cir. 1974) *certiorari denied*, 421 U.S. 987 (1975), *on appeal after remand from, United States* v. *Gargotto*, 476 F.2d 1009 (6th Cir. 1973)	3
United States v. *Healey*, 376 U.S. 75 (1964)	2
Rules of the Supreme Court of the United States	
Rule 22(2) [abrogated, June 30, 1980]	2
Rule 20.1	2
Federal Rules of Appellate Procedure	
Rule 40(a)	2
Rule 41(a)	1, 2, 4
Rules of the United States Court of Appeals For the Tenth Circuit	
Rule 16	1-2, 4
Treatise	
R. Stern and E. Gressman, *Supreme Court Practice* (BNA, 5th Ed., 1978)	3

APPENDIX

PAGE

APPENDIX A:

General Docket, United States Court of Appeals for the Tenth Circuit,

United States of America v. *Gene Stipe*, No. 79-1987

United States of America v. *John Warren Martin*, No. 79-1985

United States of America v. *John Glenn Peters*, No. 79-1986

APPENDIX B:

Order of the United States District Court for the Western District of Oklahoma, filed May 7, 1980.

79-1874

In the Supreme Court of the United States

OCTOBER TERM, 1980

GENE STIPE, ET AL.,
Petitioners,

VERSUS

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION OF PETITIONERS TO DEFER CONSIDERATION AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

COME NOW the Petitioners, Gene Stipe, John Warren Martin, and John Glenn Peters, and respectfully pray that the Court defer consideration and disposition of the pending petition for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit, filed with the Court on May 27, 1980, until final adjudication by the Court of Appeals of a motion to recall the mandate, petition for rehearing and suggestion of rehearing *en banc* all currently *sub judice* before the Court of Appeals.

In support of this Motion, petitioners would respectfully show the Court that this Motion is the product of an unusual interplay between the provisions of Rule 41(a) of the Federal Rules of Appellate Procedure, Rule 16 of

the United States Court of Appeals for the Tenth Circuit and former Rule 22(2) [now Rule 20.1] of the Rules of this Court.

(1) Pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure and Rule 16 of the Court of Appeals for the Tenth Circuit, the Court of Appeals directed that a certified copy of its judgment, which constituted its mandate, be issued to the District Court for the Western District of Oklahoma concurrently with the filing of the opinion of the Court of Appeals on April 28, 1980. Petition for writ of certiorari, Appendix A, pp. A-1, A-5.

Under Rule 16 of the Rules of the Court of Appeals for the Tenth Circuit, this procedure eliminated the right of petitioners to file any petition for rehearing in the Court of Appeals which would be considered "timely" under Rule 40(a) of the Federal Rules of Appellate Procedure. Rule 16 of the Rules of the Court of Appeals for the Tenth Circuit provides that a petition for rehearing presented after issuance of a mandate issued concurrently with an opinion, will be treated by the Court of Appeals as a motion to recall the mandate and, if granted, will be treated as an "out of time" petition for rehearing by the panel or by the full Court.

(2) Under the settled rules of practice of this Court, only a "*timely* petition for rehearing tolls the running of the . . . period" in which to file a timely petition for certiorari in this Court. *Department of Banking* v. *Pink*, 317 U.S. 264, 266 (1942) (emphasis added); *United States* v. *Healey*, 376 U.S. 75, 77-79 (1964); *see, Allegrucci v. United States*, 372 U.S. 954 (1963), where the petition for certio-

rari seeking review of an important decision of the Court of Appeals was denied "for the reason that the petition was not timely filed." *Id.* The rule is discussed at length in a standard guide on questions of practice and procedure in this Court. *See*, R. Stern and E. Gressman, *Supreme Court Practice*, §6.3 (BNA, 5th Ed., 1978). Under the circumstances of these cases, filing of a "timely" petition for rehearing in the Court of Appeals was impossible, and it was, therefore, incumbent upon counsel to file a petition seeking a writ of certiorari by May 29, 1980, regardless of possible forthcoming action by the Court of Appeals. The petition was filed with the Clerk of this Court on May 27, 1980.

(3) However, because of the importance of the issues presented, and the desirability of allowing the Court of Appeals to correct its own error, petitioners had, previously, filed, on May 7, 1980, a motion to recall the mandate, a petition for rehearing and a suggestion of rehearing *en banc* in the Court of Appeals for the Tenth Circuit. Appendix A, pp. 2-3. Petitioners did so for the reasons stated in the preceding sentence and pursuant to the holding of *United States* v. *Gargotto*, 510 F.2d 409, 412 (6th Cir. 1974) *certiorari denied*, 421 U.S. 987 (1975), *on appeal after remand from, United States* v. *Gargotto*, 476 F.2d 1009 (6th Cir. 1973). In *Gargotto*, the Court of Appeals for the Sixth Circuit squarely held that if the effect of the mandate of the Court of Appeals is to return a criminal cause to the district court for further proceedings, failure by the appellant to present a petition for rehearing constitutes a waiver of the right to urge any point of law which the appellant believes was wrongly decided on an appeal after

remand, if the point could have been presented by a petition for rehearing. *Id.*

(4) The net effect of the interplay between Rule 41(a) of the Federal Rules of Appellate Procedure, Rule 16 of the Rules of the Court of Appeals for the Tenth Circuit and the rules of practice of this Court is, thus, to create a situation in which both the Court of Appeals and this Court are potentially vested with jurisdiction by virtue of filings currently *sub judice* in both Courts.

(5) As shown by the certified copies of the docket sheets of the Court of Appeals for the Tenth Circuit in these cases, Appendix A hereto, the motion to recall the mandate, petition for rehearing, and suggestion of rehearing *en banc* were received by the Court of Appeals on May 7, 1980, and were submitted to the panel of the Court of Appeals which entered the decision presented for review here, on the same date.

As reflected by the docket sheets in these cases, Appendix A, pp. 2-3, the panel to whom these cases were submitted, and by whom they were decided, has not yet acted upon the motion to recall the mandate or petition for rehearing, nor has the Court of Appeals, or any circuit judge, taken any action upon the suggestion of rehearing *en banc*.

(6) On May 7, 1980, nine days after issuance of the mandate of the Court of Appeals, the District Court for the Western District of Oklahoma entered an order staying further proceedings looking toward a possible trial, if any, until after disposition of *both* the suggestion of rehearing *en banc* in the Court of Appeals *and* the petition for a writ

of certiorari currently *sub judice* in this Court. Appendix B, p. 1.

Petitioners respectfully submit that, under such circumstances, it would be clearly preferable to allow the Court of Appeals to consider the issues presented by petitioners' motion to recall the mandate, petition for rehearing and suggestoin of rehearing *en banc*, prior to consideration and disposition of the petition for a writ of certiorari.

In this regard, we would emphasize that the petition for rehearing and suggestion of rehearing *en banc* present to the Court of Appeals several important points of federal appellate jurisdiction which we believe the Court of Appeals overlooked or misapprehended in its opinion of April 28, 1980, and that these are the same points as are presented by the petition for certiorari currently *sub judice* in this Court.

(7) In the event the Court of Appeals grants the motion to recall the mandate and orders that these cases be reheard, either by the original panel, or by all active judges of the Court of Appeals sitting *en banc*, the pending petition for certiorari would appear to be rendered premature.

In the event such reconsideration results in a decision in favor of petitioners, the petition for certiorari would be moot, and this Court would be called upon to review the decision of the Court of Appeals, if at all, only upon consideration of a petition for a writ of certiorari which might be filed by the United States.

In the event the Court of Appeals should agree to rehear the issues here presented, and should again rule ad-

versely to petitioners, a fresh petition for a writ of certiorari to the Court of Appeals can then be presented by petitioners, seeking review of that decision.

In the event the Court of Appeals denies any rehearing or reconsideration of the issues here presented, this Court will be able to consider the pending petition for certiorari with the knowledge that it is being requested to review an important question of federal appellate procedure upon which the views of the Court of Appeals for the Tenth Circuit are firmly fixed.

Since the District Court below has itself already ordered that any possible trial in these cases will occur, if at all, only after final adjudication of the petitions *sub judice* in *both* the Court of Appeals and this Court, granting the instant motion could not in any way materially delay any such trial.

It is, therefore, respectfully submitted that until such time as the Court of Appeals has made known its ultimate disposition of the important questions here presented, consideration and disposition of the pending petition for a writ of certiorari to the Court of Appeals for the Tenth Circuit should be deferred.

Respectfully submitted,

BERNARD J. ROTHBAUM, JR.

LINN, HELMS, KIRK & BURKETT
Suite 410, Fidelity Plaza
Oklahoma City, Oklahoma 73102
(405) 239-6781

Counsel of Record for Petitioners

of Counsel:

JAMES P. LINN, *Esq.*
LINN, HELMS, KIRK & BURKETT
Suite 410, Fidelity Plaza
Oklahoma City, Oklahoma 73102
(405) 239-6781

W. H. LAYDEN, *Esq.*
323 E. Carl Albert Parkway
McAlester, Oklahoma 74501
(918) 423-6202

WARREN GOTCHER, *Esq.*
325 E. Carl Albert Parkway
McAlester, Oklahoma 74501
(918) 423-3603

September, 1980

CERTIFICATE OF SERVICE

This is to certify that three (3) true and correct copies of the instrument to which this certification is attached, were mailed, by certified mail, with postage fully prepaid thereon, to all parties required to be served, to-wit,

The Honorable Wade H. McCree, Jr.
Solicitor-General of the United States
Office of the Solicitor-General
United States Department of Justice
Washington, D.C. 20530

by the undersigned, a member of the Bar of this Court, this _____ day of September, 1980.

BERNARD J. ROTHBAUM, JR.

APPENDICES

APPENDIX A

A-1

Form A. O. 147 (July 1953)

GENERAL DOCKET 79-1987

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CR. 620 F2d 237 V.McN

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

CASE NO. 79-1987

JUDGE HOLLOWAY RECUSED

Cmp. Cases: 79-1985; 79-1986

TITLE OF CASE	ATTORNEYS FOR APPELLANT
UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. GENE STIPE, Defendant-Appellant.	(a) James P. Linn ( ) ~~Drew Neville~~ (a) B. J. Rothbaum, Jr. Linn, Helms, Kirk & Burkett Suite 410, Fidelity Plaza Oklahoma City, Oklahoma 7310: 405/ 239-6781
	ATTORNEYS FOR APPELLEE
	(a) Larry D. Patton Teresa M. Black U.S. Attorney's Office Western District of Oklahoma 4434 Federal Courthouse Oklahoma, OK 73102 405 231-5281

No. BELOW: 79-00123-03

JUDGE BELOW: Thompson

Reporter Marks

DATE OF JUDGMENT: 8-22-79

NOTICE OF APPEAL FILED: 8-31-79

Action Commenced: 7-6-79

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
9/12/79	Docket Fee Paid in District Court			

A-2

GENERAL DOCKET

79-1

UNITED STATES COURT OF APPEALS
FOR THE
TENTH CIRCUIT

CASE NO.	79-1987	United States of America v. Gene Stipe

DATE	FILINGS—PROCEEDINGS	Filed
9/12/79	CS.DKT. Case docketed	
	DKT.ST.DUE Appellant's docketing statement due 9/21/79	
9-18-79	NAPR.F. Notice of appearance filed by Linn and Rothbaum, Jr., as attor for appellant.	
9/19/79	DKT.ST.F. Appellant's docketing statement filed - 10 cc c/s	
9-25-79	M.DS.CS.F. Appellee's motion to dismiss case filed - 4cc. c/s.	
	~~M-DS-CS-RES-F- Appellant's response to motion to dismiss case filed - 4cc - c/s.~~	
	~~M-DS-CS-RES-RPLY-F. Appellee's reply to appellant's response to motion to dismiss filed - 4cc - c/s~~	
~~9-26-79~~	~~M-DS-CS-RES-RPLY-F- Appellant's reply to appellee's response to motion to dismiss filed - 6cc.~~ c/s.	
9-25-79	M.RMK.F. Appellant's motion to consolidate briefing of the motion to di filed - 4cc. c/s.	
	M.RMK.RES.F. Appellee's response to appellant's ~~to appellant's~~ motion t consolidate briefing filed - 4cc. c/s.	
	M.RMK.RES.RPLY.F. Appellant's reply to appellee's response to appellant motion to consolidate on briefing filed - 4cc. c/s.	
10-1-79	M.RMK.SUBM.PAN. Appellant's motion to consolidate briefing of the moti dismiss is submitted to panel.	
	M.RMK.RES.SUBM.PAN. Appellee's response to appellant's motion to conso briefing is submitted to panel.	
	M.RMK.RES.RPLY.SUBM.PAN. Appellant's reply to appellee's response to a motion to consolidate on briefing is submitted to panel.	
10/3/79	ROA.F Record on appeal filed, Volume I (pleadings) (108 pp); 1 copy	
10/18/79	M.DS.CS.RMK. Order: The United States shall respond to motion to dismi in its brief due 11/21/79. McWilliams, Breitenstein, Doyle	
	O.BR.DUE. Order: Appellant's brief due 11/5/79- McWilliams, Breitenst	
	O.BR.DUE. Order: Appellee's brief due 11/21/79 - McWilliams, Breitenst Doyle	
	O.HRG.SET. Order: Set for hearing to the Court on Wednesday, November 28, 1979 at 2:00 P.M. in Denver - McWilliams, Breitenstein, Doyle	
10/18/79	HRG.SET Hearing set for November, 1979, Term - Denver, Colorado	
10/23/79	NAPR.F Notice of appearance filed by Patton and Black as attorneys for Appellee	
11-5-79	M.F.BR.F. Appellants' motion to file brief in excess of pages filed - 25cc. c/s.	
	BR.F. Appellant's brief filed - 25cc. c/s.	
	APX.F. Appellant's joint appendix filed - 25cc. c/s.	
11/7/79	M.F.BR.SUBM Appellants' motion to file brief in excess of pages submitted to panel	
11/16/79	M.F.BR.DISP Granted appellant's motion to file brief in excess of pages disposed of by Barrett	
11/23/79	BR.F. Appellee's brief filed - 10 cc c/s	
	APX.F. Appellee's appendix filed - 10 cc c/s	
11/27/79	BR.F. Appellant's reply brief filed - 14 cc c/s	

A-3

Form A.O. 147a (July 1963)

NOTE IN ANY EN BANC ORDER THAT JUDGE HOLLOWAY DID NOT PARTICIPATE.

79-1987

CASE NO. 79-1'

DATE		Filed
11/28/79	CS.ARG.SUBM - case argued and submitted to Barrett, Doyle, McKay	
4/28/80	OPN.F. Published signed opinion filed - Barrett, Doyle, McKay Writing Judge is McKay	
	JM.DISP. Judgment disposed, appeal dismissed	
	MDT.ISS. Mandate issued to district court	
5/2/80	ROA.RTN.DC. Record on appeal returned to Dist. Ct. Vol. I	
5/7/80	ROA.RCPT.F. Record receipt filed	
	P.REHRG.ENB.F. Appellants' petition for rehearing en banc filed, 11 c c/s	
	P.REHRG.ENB.SUBM. Appellants' petition for rehearing en banc submitte to panel	
5/5/80	MDT.RCPT.F - mandate receipt filed	
5/31/80	P.WRIT.CERT.F. Appellant's petition for writ of certiorari filed on 5/27/80 - Supreme Court No. 79-1874.	

Form A. O. 147 (July 1953)

GENERAL DOCKET 79-1986

UNITED STATES COURT OF APPEALS

FOR THE

CR. TENTH CIRCUIT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

CASE NO. 79-1986 VMcN

JUDGE HOLLOWAY RECUSED

Cmp. Cases: 79-1985; 79-1987

TITLE OF CASE	ATTORNEYS FOR APPELLANT
UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JOHN GLENN PETERS, Defendant-Appellant.	( ) Warren Gotcher 325 E. Carl Albert Parkway McAlester, Oklahoma 74501 918/ 423-3603 ATTORNEYS FOR APPELLEE (a) Larry D. Patton Teresa M. Black U.S. Attorney's Office 4434 Federal Courthouse Oklahoma City, Oklahoma 7310 405-231-5281

No. BELOW: 79-00123-02

JUDGE BELOW: Thompson

Reporter Marks

DATE OF JUDGMENT: 8-22-79

NOTICE OF APPEAL FILED: 8-31-79

Action Commenced: 7-6-79

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
9/12/79	Docket Fee Paid in District Court			

A-5

NOTE IN ANY EN BANC ORDER THAT JUDGE —— HOLLOWAY DID NOT PARTICIPATE.

9-1986

CASE NO. 79-1986

DATE	FILINGS—PROCEEDINGS
	Filed
9/12/79	CS.DKT. Case docketed
9-19-79	DKT.ST.F. Appellant's docketing statement filed, 7 cc, c/s NAPR.F. Notice of appearance filed by Patton and Black as attorney for appellee.
9/20/79	NAPR.F Notice of appearance filed by Gotcher as attorney for the appella
10/3/79	ROA.F Record on appeal filed, Volume I (pleadings) (108 pp); 1 copy
10/18/79	O.BR.DUE. Order: Appellant's brief due 11/5/79 - McWilliams, Breitenst Doyle O.BR.DUE. Order: Appellee's brief due 11/21/79 -McWilliams,Breitenstei O.HRG.SET. Order: Set for hearing to the Court on Wednesday, November 1979 at 2:00 P.M. in Denver. - McWilliams,Breitenstein, Doyle
10/18/79	HRG.SET Hearing set for November, 1979, Term - Denver, Colorado
11-5-79	M.ADPT.BR.F. Appellant's motion to adopt appellant's brief in 79-1987 filed - 1cc. c/s. ~~M.F.BR.F.--Appellants'-motion-to-file-brief-in-excess-of-pages-filed - 25cc--c/s.~~ ~~BR.F.--Appellant's-brief-filed---25cc.--c/s.~~ ~~APX.F.--Appellant's-joint-appendix-filed---25cc.--c.s.~~
11/7/79	M.ADPT.BR.SUBM Appelalnt's motion to adopt appellant's brief in 79-1987 submitted to panel
11/16/79	M.ADPT.BR.DISP Granted appellant's motion to adopt appellant's brief in 79-1987 disposed of by Barrett BR.F Appellant's brief filed, 25 copies, c/s
11/23/79	BR.F. Appellee's brief filed - 10 cc c/s APX.F. Appellee's appendix filed - 10 cc c/s
11/27/79	BR.F. Appellant's reply brief filed (Stipe) 14 cc c/s
11/28/79	CS.ARG.SUBM - case argued and submitted to Barrett, Doyle, McKay
4/28/80	OPN.F. Published signed opinion filed - Barrett, Doyle, McKay Writing Judge is McKay JM.DISP. Judgment disposed, appeal dismissed MDT.ISS. Mandate issued to district court
5/2/80	ROA.RTN.DC. Record on appeal returned to Dist. Ct. Vol. I
5/7/80	ROA.RCPT.F. Record receipt filed P.REHRG.ENB.F. Appellants' petition for rehearing en banc filed, 11 cc, c/s P.REHRG.ENB.SUBM. Appellants' petition for rehearing en banc submitted to panel
/5/80	MDT.RCPT.F - mandate receipt filed
5/31/80	P.WRIT.CERT.F. Appellant's petition for writ of certiorari filed on 5/27/80 - Supreme Court No. 79-1874

A-6

Form A. O. 147 (July 1953)

GENERAL DOCKET 79-1985

UNITED STATES COURT OF APPEALS

FOR THE

CR. 620 F2d 237 TENTH CIRCUIT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

CASE NO. 79-1985

JUDGE HOLLOWAY RECUSED

Cmp. Cases: 79-1986; 79-1987

TITLE OF CASE	ATTORNEYS FOR APPELLANT
UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JOHN WARREN MARTIN, Defendant-Appellant.	( ) W. H. Layden 323 E. Carl Albert Parkway McAlester, Oklahoma 74501 918/ 423-~~3603~~ 6202
	ATTORNEYS FOR APPELLEE
	(a) Larry D. Patton (a) Teresa M. Black U.S. Attorney's Office Western District of Oklahoma 4434 Federal Courthouse Oklahoma city, OK 73102 405 231-5281

No. BELOW: 79-00123-01

JUDGE BELOW: Thompson

Reporter Marks

DATE OF JUDGMENT: 8-22-79

NOTICE OF APPEAL FILED: 8-31-79

Action Commenced: 7-6-79

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
bje 9/12/79	Docket Fee Paid in District Court			

A-7

GENERAL DOCKET

79-198

UNITED STATES COURT OF APPEALS
FOR THE
TENTH CIRCUIT

CASE NO.	79-1985	United States of America v. John Warren Martin

DATE	FILINGS—PROCEEDINGS	Filed
9/12/79	CS.DKT. Case docketed DKT.ST.DUE Docketing statement due 9/21/79	
9-19-79	NAPR.F. Notice of appearance filed by Layden as attorney for appellant.	
10/3/79	ROA.F Record on appeal filed, Volume I (pleadings) (108 pp); 1 copy	
10/18/79	O.BR.DUE. Order: Appellant's brief due 11/5/79 - McWilliams,Breitenstei O.BR.DUE. Order: Appellee's brief due 11/21/79 -McWilliams, Breitenstei Doyle O.HRG.SET. Order: Set for hearing to the Court on Wednesday, November 2 1979 at 2:00 P.M. in Denver, McWilliams, Breitenstein, Doyle	
10/18/79	HRG.SET Hearing set for November, 1979, Term - Denver, Colorado	
10/23/79	NAPR.F Notice of appearance filed by Patton and Black as attorneys for Appellee	
11-5-79	M.ADPT.BR.F. Appellant's motion to adopt appellant's brief in 79-1987 filed - 4cc. c/s. ~~M.F.BR.F.--Appellants' motion to file brief in excess of pages filed--25cc. c/s.~~ ~~BR.F.--Appellant's brief filed--25cc. c/s.~~ ~~APX.F.--Appellant's joint appendix filed--25cc. c/s.~~	
11/7/79	M.ADPT.BR.SUBM Appellant's motion to adopt appellant's brief in 79-1987 submitted to panel	
11/16/79	M.ADPT.BR.DISP Granted appellant's motion to adopt appellant's brief in 79-1987 disposed of by Barrett	
11/26/79	BR.F Appellant's brief filed - 25 cc, c/s BR.F. Appellee's brief filed - 10 cc c/s APX.F. Appellee's appendix filed - 10 cc c/s	
11/27/79	BR.F. Appellant's reply brief filed (Stipe) - 14 cc c/s	
11/28/79	CS.ARG.SUBM - case argued and submitted to Barrett, Doyle, McKay	
4/28/80	OPN.F. Published signed opinion filed - Barrett, Doyle, McKay Writing Judge is McKay JM.DISP. Judgment disposed, appeal dismissed MDT.ISS. Mandate issued to district court	
5/2/80	ROA.RTN.DC. Record on appeal retured to Dist. Ct. Vol. I	
5/7/80	ROA.RCPT.F. Record receipt filed. P.REHRG.ENB.F. Appellants' petition for rehearing en banc filed, 11 cc, c/s P.REHRG.ENB.SUBM. Appellants' petition for rehearing en banc submitted to panel	
5/5/80	MDT.RCPT.F - mandate receipt filed	
5/31/80	P.WRIT.CERT.F. Appellant's petition for writ of certiorari filed on 5/27/80 - Supreme Court No. 79-1874	

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

[Filed May 7, 1980]

UNITED STATES OF AMERICA, Plaintiff	)	
vs.	)	No. CR-79-123-T
JOHN WARREN MARTIN, JOHN GLENN PETERS, and GENE STIPE, Defendants.	)	

ORDER CONTINUING STAY

Defendants Martin, Peters and Stipe have moved to continue the stay of proceedings herein until disposition of defendants' application for rehearing *en banc* before the United States Court of Appeals for the Tenth Circuit, and petitions for writs of certiorari in the United States Supreme Court. The government has responded stating its readiness for trial but raising no objection to the motion. Upon consideration and for good cause shown.

IT IS ORDERED that defendants' motion is granted and this Court's order of September 4, 1979, staying trial, is hereby continued pending disposition of defendants' application for rehearing *en banc* before the United States Court of Appeals for the Tenth Circuit and their petitions for writs of certiorari in the United States Supreme Court or to such other time as this Court may direct.

DATED this *7th* day of May, 1980.

(s) *Ralph G. Thompson*
UNITED STATES DISTRICT JUDGE